

Reagan years. Last I looked, we had a Federal budget of, now, \$1.6 trillion. Doesn't look like a lot of "slashing" and "cutting" to me. Does anyone seriously believe that the American public will buy the notion that we are tearing spending to ribbons when we have a Federal budget of \$1.6 trillion? Something just doesn't add up there.

The reality is that we have programs like Head Start that are going up 140 percent over the course of 6 years—and the opposition comes down here, still, to charge that it is being torn apart by Republican budget cuts.

It is a mode of argument that simply will not work anymore. There is simply too much clear evidence to the contrary.

There is still much to do to bring our Government's house into order. But by any measure, the first 100 days of this Congress have been a darn good start. We owe the House our rich congratulations.●

SHORTSIGHTED RESCISSIONS

● Mr. LEVIN. Mr. President, the rescission bill approved by the Senate last night included a very short-sighted cut, which I strongly opposed. The bill we sent to conference with the House rescinds \$93.5 million for the base realignment and closure account for the 1993 round of military facility closures, and another \$10.6 million for the base realignment and closure account for the 1991 round of facility closures. These BRAC accounts provide the funds to close and realign military bases including, most urgently, to clean up an environmental contamination that the military services caused while they occupied those facilities.

During consideration of the bill, I voted for the Mikulski amendment, which would have restored funds for cleanup of closing bases and funds for other important national programs. Now, I strongly encourage the conference committee to restore these funds.

When we voted for base closures over the last 5 years, we also committed to complete environmental restoration and remediation at those facilities quickly, in fact within a maximum of 5 years from the time closure was approved. I consider that a solemn commitment from us, and from President Clinton to the affected communities, which spent years as good neighbors to the military, providing all kinds of support. Each of those communities was serving our country with their support of local military facilities. The President and Department of Defense have tried to keep this commitment by requesting full funding for BRAC activities. We appropriated most of what was asked for last year. It would be a mistake to rescind more funding.

Mr. President, not only is it wrong to renege on the commitment we made to cleanup swiftly the military bases we have ordered to close, so that reuse there is possible. Underfunding this ac-

tivity by rescinding fiscal year 1995 BRAC funds is also short-sighted. It's probably not even penny-wise, but it is certainly pound-foolish.

In many cases, Federal and State laws require this cleanup. At some bases, consent agreements now dictate specific cleanup activities and deadlines, the cost of which must be paid from the BRAC accounts. So BRAC rescissions are false savings. We still have to complete these environmental restoration activities. When we delay, it becomes more expensive, because the contamination in many cases gets worse. Soil and groundwater contamination can spread. And if consent agreements are violated because of lack of funds, the Federal Facilities Compliance Act says the Federal Government may be subject to fines and penalties.

The Governor of California, Pete Wilson, recently wrote to the Secretary of Defense on this subject, saying:

The continued erosion of cleanup funding inevitably will threaten the health of armed services personnel and civilians who work at military bases where contamination is present. It will also exacerbate economic suffering in communities that are struggling to redevelop closing bases. And, if the federal government will not meet its cleanup obligation, how can we expect private industry to do so? DOD is contractually obligated to seek sufficient funding to permit environmental work to proceed according to the schedules contained in those agreements. California will not hesitate to assert its right under those agreements to seek fines, penalties and judicial orders compelling DOD to conduct required environmental work.

The attorney general of Texas expressed similar sentiments in a letter to the Pentagon, saying:

If, in other words, the DOD and the federal government do not comply with all applicable cleanup laws, then other entities may begin to question why they should comply with cleanup laws. Hopefully, we have not reached the point of the federal government taking the position of "do as I say, and not as I do."

I would ask that the entire letter of January 25, 1995 from Governor Wilson to Secretary Perry, and the December 29, 1994 letter from Attorney General Dan Morales to Under Secretary of Defense Sherri Wasserman Goodman be printed in the RECORD.

SACRAMENTO, CA,
January 25, 1995.

Hon. WILLIAM PERRY,
Secretary of Defense, The Pentagon,
Washington, DC.

DEAR SECRETARY PERRY: I would like to express my deep concern about recent actions at the Department of Defense (DOD) and in Congress regarding cuts in funding for environmental restoration of military bases.

The recent decision by Congress to cut \$400 million from the Defense Environmental Restoration Account (DERA) for FY95 continues a disturbing trend begun last year when Congress rescinded \$507 million from the Base Realignment and Closure (BRAC) Account. California was reassured that the BRAC rescission would not affect environmental work at closing military bases, but work was indeed scaled back at several California military bases due to the cut. The DERA cut presumably means that DOD will

seek to postpone or eliminate environmental work at operational military bases.

At the same time, the DOD Comptroller has announced an additional \$437 million in cuts for cleanup programs through FY97. Such actions can only encourage members of Congress who would like to redirect DOD environmental spending into more traditional defense programs.

The continued erosion of cleanup funding inevitably will threaten the health of armed services personnel and civilians who work at military bases where contamination is present. It will also exacerbate economic suffering in communities that are struggling to redevelop closing bases. And, if the federal government will not meet its cleanup obligation, how can we expect private industry to do so?

California expects DOD to comply with the federal/state cleanup agreements it has signed at California military bases. DOD is contractually obligated to seek sufficient funding to permit environmental work to proceed according to the schedules contained in those agreements. California will not hesitate to assert its right under those agreements to seek fines, penalties and judicial orders compelling DOD to conduct required environmental work.

I would be happy to work with you to strengthen support in Washington for full funding of DOD cleanup work. One way to reduce oversight costs would be to delist military bases from the National Priorities List and give states the exclusive responsibility for overseeing base cleanups. Please do not hesitate to contact me if I can be of assistance in these areas.

Sincerely,

PETE WILSON.

OFFICE OF THE ATTORNEY GENERAL,
Austin, TX, December 29, 1994.

Re additional comments to the Defense environmental response task force fiscal year 1994 annual report to Congress.

Ms. Sherri Wasserman Goodman,
Deputy Under Secretary of Defense (Environmental Security), Defense Pentagon, Washington, DC.

DEAR MS. GOODMAN: I continue to believe that much progress has been made in the cleanup program of the Department of Defense ("DoD") as a result of the work done by you and your office. It is important, however, that the policies declared at the headquarters level continue to permeate down through the Services to the base or facility level. I am not quite sure at this point, in other words, that all of the policies and efforts set forth at the headquarters level have been fully embraced or implemented at the facility level.

Because of possible adverse effects on future cleanups at closing bases, I am deeply concerned about recent action taken by the DoD Comptroller with regard to the DoD environmental remediation and compliance budget. I understand that the Comptroller desires to cut over a half-billion dollars from the DoD's request for environmental cleanup and compliance. Not only would such a cut be short-sighted, I firmly believe that it would be unlawful if it is the case that all of the legal requirements facing the DoD could not be met (as a financial or budgeting matter) in accordance with Executive Order 12088 (Federal Compliance with Pollution Control Standards (Oct. 10, 1978)) and the many federal facility and state cleanup agreements entered into in good faith by the DoD. While saving taxpayers' money and ensuring military readiness are surely critically important objectives, the compliance by DoD with all applicable laws purposed at protecting

our citizens' health and safety is also extremely important. Unfortunately, DoD appears to be sliding towards the purposeful disregard of its cleanup obligations.

More fundamentally, I am perplexed that a certain element within DoD apparently does not believe that a safe and healthy work and living environment for our servicemen and women (and their families) is important for their well-being, as well as for our national security. Surely, the people who are responsible for defending this country should be accorded the same degree of protection from carcinogens and other hazardous substances accorded workers and their families in the private sector.

Furthermore, I assume that the Comptroller does not intend for the DoD to shirk its responsibility to protect the health and safety of the communities surrounding defense bases, especially if those communities consist of groups, such as Hispanics and African-Americans, which have historically been the victims of environmental injustice. We cannot pull the ladder up on these groups by cutting the environmental cleanup and compliance budget so soon after finally initiating environmental justice efforts.

Lastly, regarding the remediation funding issue, it is clear that if DoD does not take its cleanup responsibilities seriously enough to request adequate funding, then DoD will be sending the worst possible signal to the private sector and the local and state governments facing similar cleanup responsibilities. If, in other words, the DoD and the federal government do not comply with all applicable cleanup laws, then other entities may begin to question why they should comply with cleanup laws. Hopefully, we have not reached the point of the federal government taking the position of "do as I say, and not as I do."

Aside from comments regarding the DoD Comptroller budget cutting issue, I hereby submit additional comments to the 1994 Defense Environmental Response Task Force ("DERTF") Annual Report to Congress:

1. Future Land Use. Whether future land use should be a factor in determining if DoD property is contaminated, or to what standards the property must be cleaned up, are policy questions ultimately to be decided by Congress. Until Congress expressly decides, however, whether the consideration of future land use is appropriate in the cleanup context, DoD must comply with all existing applicable requirements of the U.S. Environmental Protection Agency ("EPA") and the respective states in determining what constitutes "all remedial action" necessary to protect the human health and environment. Thus, whether future land use is a legitimate or legal consideration in establishing appropriate cleanup levels currently depends upon whether the regulators allow such consideration, either explicitly or implicitly.

As my office has frequently stated during the DERTF proceedings, attempts to subsidize economic redevelopment of bases by allowing the cleanup standards to be loosened may be problematic in the long run for our communities, citizens, and base transferees, as well as short-sighted for DoD. It is still unclear to me whether the following issues have been carefully thought through:

(1) Who or what entity decides future land use?

(2) What happens when a community decides in the future to change the use of the transferred property?

(3) What happens when cleanup standards related to a certain use are ratcheted upwards by EPA or by the respective states?

Until the answers to such issues are further refined and a consensus is reached by all stakeholders, I caution against moving too quickly to short-term solutions that may be

more budget-based than health and safety-based.

2. Harmonization with Private Sector Standards. The goal of trying to quickly-transfer bases to our communities is to ensure quick development in order to create jobs and promote the economic health of our communities—it is not the quick transfer of bases for the mere sake of quick transfer. Unless, however, private sector lenders, developers, and investors are sufficiently comfortable that they will not face potential environmental liability, they simply will not get involved in the redevelopment of a closed base.

Thus, it is critical that DoD's investigative, remedial, and transfer processes mirror the processes found in the private sector. For example, the investigation and remediation processes established by the Services should reflect and fulfill the same requirements, roles, and functions as environmental due diligence efforts in the private sector. Failure to harmonize efforts between the DoD and the private sector in this regard will only result in delay subsequent to the transfer of closed bases. I have instructed my office to continue to encourage DoD to make every effort to harmonize, to the extent allowed by law, its investigative, remedial, and transfer practices with private sector practices.

3. Base Transfers Prior to Remedial Action. The DERTF Annual Report indicates that the DERTF proposes to examine possible changes in the law to allow property to be deeded before remedial actions are in place and properly and successfully operating, so long as there is no increased threat to human health and the environment.

Section 120(h)(3) of CERCLA requires that each deed transferring federal property contain a covenant warranting that all remedial action necessary to protect human health and the environment has been taken and that any additional remedial action found to be necessary after the transfer shall be taken by the government. Generally this means that base property cannot be transferred before it is cleaned up. This important statutory requirement helps to protect future occupants from harm, and the United States from liability. In light of the Anti-Deficiency Act and other barriers to the ensuring of sufficient funding for cleanups, the requirement of base cleanup before transfer provides the one sure means of ensuring that there will indeed be cleanup of the facility to be transferred.

The risks involved in deeding property before cleanup is completed in accordance with all applicable law outweigh any potential benefits of such premature deeding, in my opinion. Even if deeding contaminated property does not actually increase the threat to human health, it will reduce DoD's control over the transferred property, breach an important regulatory checkpoint, and increase the legal risks to all parties. I continue to believe that this option should be rejected by the DERTF.

There is, furthermore, no statutory cleanup completion requirement for leases. While it may be, as the Services are claiming, that leases are not being used by the Services in order to avoid their cleanup responsibilities or to circumvent the ultimate purpose of CERCLA, long-term leases are clearly being used to avoid—strictly speaking—the provisions of CERCLA §120(h)(3). While leases can and have been used to facilitate reuse in conjunction with remediation on terms that are fully protective of human health and the environment, it is critical that the Services maintain adequate control over the leased property in order to ensure that public health and safety are protected, that cleanup activities are facilitated, and that the lessee

is not doing anything that might increase the legal liability of the government or any other party. I am not confident at this point that sufficient institutional controls akin to those established in the private sector long-term property management have yet been developed by DoD in the base closure context.

4. Indemnification of Future Owners. The Annual Report points out that the Defense Authorization Act for Fiscal Year 1993 ("Act") contains provisions to indemnify transferees from environmental liability, and implies that no further study of indemnification is needed. The Act indemnifies states, political subdivisions and any other person or entity that acquires ownership or control of a closing base from suits arising out of any claim for personal injury or property damage resulting from the release or threatened release of hazardous substances.

Clearly, the federal government is solely responsible for cleaning up contamination caused by its activities prior to base closure. CERCLA, however, provides as a general matter that the current owner (i.e., the transferee receiving title to the closed base) is jointly and severally liable for response costs. Thus the transferee may be found jointly and severally liable for the cost of clean up residual contamination left from military activities notwithstanding the provisions of CERCLA §120(h)(3). I am unsure whether the indemnity provision cited above unambiguously provides otherwise. I recommend that DERTF study this issue and that the Act be clarified to comply with the common understanding of the government's responsibilities.

In any event, while who ultimately is responsible for response costs is a relatively straightforward legal issue, determining whose "molecules" are contaminating the groundwater or soil may be a very difficult factual issue—an issue that may only be determined after much litigation and much expense for all parties concerned.

I look forward to continuing my office's participation in the DERTF proceedings. As we move on to the next round of base closures, it is critical that we continue to improve the base cleanup and transfer process. Thank you for the opportunity to add my comments to the DERTF Annual Report to be submitted to Congress.

Sincerely,

DAN MORALES,
Attorney General of Texas.

Mr. LEVIN. Mr. President, the Senate bill rescinds fiscal year 1995 BRAC funding that DOD did ask for and that we appropriated, as we should have. If the conference committee accepts these rescissions in the BRAC accounts, it will further slow cleanup that has already been delayed by previous cuts. Last year Congress rescinded half a billion dollars from BRAC accounts to pay part of the cost of earthquake recovery in California. That reduction was spread by the Department of Defense among many facilities, and the pace of cleanup was slowed.

I know some in Congress have attacked environmental restoration as not a legitimate Pentagon expenditure. But where the military caused environmental damage, especially where it now interferes with productive reuse of land and property in the middle of severely dislocated communities, that damage constitutes a real cost of military activities. It is just a deferred cost

created by the Federal Government, a bill that has not yet been paid. We must pay it. We promised to pay it, and the BRAC accounts hold the funds.

The Department of Defense strongly supports these BRAC expenditures. Air Force Secretary Sheila Widnall told the Armed Services Committee:

I cannot think of anything more short-sighted than to not fund for to rescind environmental cleanup money for BRAC bases.

Secretary of Defense Perry told the Budget Committee:

That work has to be done, there's no doubt. This environmental cleanup we're doing is legislatively required. It's not as if it's a discretion on the part of the Defense Department.

Reducing our excess military facility capacity is necessary, Mr. President, but it is extremely painful for local communities whose economics have become reliant on a facility over many decades. Base closure causes a huge economic and social disruption, especially in smaller, rural communities where a base has dominated the local job picture. At least 30 States are already directly affected by base closures initiated in the 6 years, and additional bases are scheduled to be identified this summer for closure.

The base closure process has been devastating to military facilities in my own State of Michigan. We have now lost all three of our active Air Force bases, a number of smaller facilities, and still more closures have been proposed in Michigan for the current BRAC round IV. If the reductions proposed in this Senate bill are approved by the full Congress and signed into law by the President, the impact will be felt in many communities with closing bases from BRAC rounds II and III that are currently struggling to survive, including Wurtsmith Air Force Base in Oscoda and K.I. Sawyer in Gwinn, MI. These communities are trying to attract new businesses with new jobs, and the land and property that has been contaminated by the military cannot be made available for other use until it is cleaned up. That takes money, and the money must come from these BRAC accounts.

Mr. President, last month 17 of my colleagues in the Senate wrote to the chairman and ranking member of the Senate Appropriations Committee. We urged the committee to fully fund environmental cleanup at closed military bases, and specifically to not rescind fiscal year 1995 funds. I ask that the full letter, signed by 18 Senators, be printed at this point in the RECORD.

The letter follows:

U.S. SENATE,

Washington, DC, February 27, 1995.

Hon. MARK O. HATFIELD,
Senate Appropriations Committee, U.S. Senate,
Washington, DC.

DEAR MR. CHAIRMAN: When the President and Congress initiated the process of closing military bases, we made a solemn commitment to complete environmental restoration and remediation at those facilities quickly. We recognized that cleanup is essential before property can be released by the govern-

ment and reused by local communities trying to rebuild their economies and attract new jobs. Congress must not now renege on this commitment by underfunding the Base Realignment and Closure (BRAC) accounts that pay for this cleanup.

Our nation's military facilities infrastructure must be reduced commensurate with the downsizing of armed forces. At least 30 states are already directly affected by base closures initiated in the first three rounds of the closure process, and additional bases are scheduled to be identified for closure this summer. Where the federal government has caused environmental contamination during its tenancy, that damage must be substantially repaired before property can be transferred to a state, locality or private owner for productive reuse. Environmental damage is a real cost incurred as a result of DOD activities and it should be paid for out of the DOD budget.

In many cases, federal and state laws govern the cleanup activities required, and at some bases the relevant parties have negotiated consent agreements mandating specific cleanup deadlines. Costs associated with these activities are paid for from the BRAC accounts, which the Administration and Congress have funded adequately in recent years.

Defense Secretary William Perry recently testified to the Senate Budget Committee that "This environmental cleanup we're doing is legislatively required. It's not as if it's a discretion on the part of the Defense Department. That work has to be done, there's no doubt." And Air Force Secretary Sheila Widnall testified last year that "I cannot think of anything more short-sighted than to not fund or to rescind environmental cleanup money for BRAC bases."

For all of these reasons, we request that you reject any rescission of FY 1995 funds in this area, and that you support full funding of the Department of Defense FY 1996 request for Base Realignment and Closure cleanup activities.

Thank you for your consideration.

Sincerely,

Patrick Leahy, Daniel K. Akaka, Barbara Boxer, Ben Nighthorse Campbell, John Lieberman, Frank R. Lautenberg, John F. Kerry, Carl Levin, Claiborne Pell, Patty Murray, David Pryor, Herb Kohl, Chuck Robb, Paul Sarbanes, Tom Daschle, Dianne Feinstein, Olympia Snowe.

Mr. LEVIN. We hope that the committee would heed our advice. Now it is vital that the conference committee restores these funds so that cleanup goes forward without delay, and productive reuse in communities with closing bases can be accomplished swiftly.●

● Mr. HATFIELD. Mr. President, President Franklin Delano Roosevelt will live forever in the hearts and minds of Americans. This memorable leader helped to lead this country through both a worldwide depression and a world war, and when he died he left the country positioned to take its place as the leader of the free world. Fifty years ago April 12, the people of our great country lost a President, a statesman, and a leader.

Since 1971 I have had the honor to have served on the Franklin Delano Roosevelt Memorial Commission, the past 5 years of this time serving as the cochairman with my distinguished colleague from Hawaii, Senator INOUE.

This Commission was formally established by Public Law 372 in 1955 with the responsibility of constructing an appropriate memorial to the 32d President of the United States. That memorial, which is to be unveiled in 1997, is a tribute not only to Roosevelt the President, but also to an era.

I was 10 years old when Franklin Roosevelt was elected President. I was a 20-year-old naval officer in the waters off Okinawa when I heard the news that the President had died. Millions of Americans, like myself, had grown up with the Roosevelts. To many it seemed that he would be President forever. Suddenly, while the United States are still engaged in war, our Commander in Chief was gone. The feeling was one of loss and uncertainty. Roosevelt was to many Americans the only President we had known, to millions he was a hero and a friend. The future suddenly became uncertain for those at home and overseas.

That uncertainty soon turned to confidence as the war was won and the United States took its place not only as the champion of freedom and peace but as the most prosperous nation the world has ever known. Roosevelt had ensured the future of the country by preparing it for the demands of the 20th century.

It was Roosevelt's dedication to the future of this country which instigated such universally accepted successes as the GI bill of rights and the Social Security Act. The GI bill assisted over 50 percent of the returning soldiers, sailors, marines, and airmen, guaranteed for the United States an educated and skilled populace unrivaled in the world. While the GI bill provided for those upon whose backs the future lay, the Social Security Act helped those who had already carried the burden.

As is now well known, Franklin Roosevelt fought a constant battle with the crippling effects of polio even as he waged war against the Great Depression and the forces of fascism. His accomplishments as President serve as the greatest testament to his personal victories, and he survives still as an example of the human ability to challenge and overcome even the greatest of obstacles.

Mr. President, the life and Presidency of Franklin Delano Roosevelt serves as a reminder to each of us, to my colleagues in the Senate and to the people all across this country, of the ability of the American people to face up to and overcome any and all challenges. To look the uncertainties of the future in the face and to move forward with confidence and an unshakable faith. This is indeed Roosevelt's longest and best lived legacy, his eternal challenge to each and every one of us. For as he wrote soon before his death, "The only limit to our realization of tomorrow will be our doubts of today. Let us move forward with strong and active faith."●